

## Department of Veterans Affairs

## §21.4135

### (i)-(j) [Reserved]

[31 FR 6774, May 6, 1966, as amended at 39 FR 43220, Dec. 11, 1974; 41 FR 47929, Nov. 1, 1976; 46 FR 62060, Dec. 22, 1981; 48 FR 37977 and 37978, Aug. 22, 1983; 49 FR 5113, Feb. 10, 1984; 50 FR 48581, Nov. 26, 1985; 51 FR 16318, May 2, 1986; 54 FR 28677, July 7, 1989; 57 FR 40614, Sept. 4, 1992; 61 FR 6782, Feb. 22, 1996; 61 FR 26113, May 24, 1996; 64 FR 23772, May 4, 1999; 66 FR 38938, July 26, 2001]

### §21.4135 Discontinuance dates.

The effective date of reduction or discontinuance of educational assistance allowance will be as specified in this section. If more than one type of reduction or discontinuance is involved, the earliest date will control.

#### (a) *Death of veteran or eligible person.*

(1) If the veteran or eligible person receives an advance payment pursuant to 38 U.S.C. 3680(d) and dies before the period covered by the advance payment ends, the discontinuance date of educational assistance shall be the last date of the period covered by the advance payment.

(2) In all other cases if the veteran or eligible person dies while pursuing a program of education, the discontinuance date of educational assistance shall be the last date of attendance.

(Authority: 38 U.S.C. 3680)

(b) *Election to receive educational assistance under the Montgomery GI Bill—Active Duty.* If a veteran makes a valid election, as provided in §21.7045(d), to receive educational assistance under the Montgomery GI Bill—Active Duty in lieu of educational assistance under the Post-Vietnam Era Veterans' Educational Assistance Program, the discontinuance date of educational assistance under the Post-Vietnam Era Veterans' Educational Assistance Program shall be the date on which the election was made pursuant to procedures described in §21.7045(d)(2).

(Authority: 38 U.S.C. 3018C(c)(1))

#### (c)-(d) [Reserved]

(e) *Course discontinued; course interrupted; course terminated; course not satisfactorily completed or withdrawn from.*

(1) If the individual receives all non-punitive grades, or withdraws from all courses other than because of being ordered to active duty, and no mitigating

circumstances are found, VA will terminate the individual's educational assistance allowance effective the first date of the term in which the withdrawal occurs.

(2) If the individual withdraws from all other courses other than courses in paragraph (e)(3) of this section and with mitigating circumstances, or withdraws from all courses such that a punitive grade is or will be assigned for those courses:

(i) Residence training: Last date of attendance.

(ii) Independent study: Official date of change in status under the practices of the institution.

(3) If the individual withdraws from correspondence, flight, farm cooperative, cooperative or job training, benefits will be terminated effective:

(i) Correspondence training: Date last lesson is serviced.

(ii) Flight training: Date of last instruction.

(iii) Job training: Date of last training.

(iv) Farm cooperative training: Date of last class attendance.

(v) Cooperative training: Date of last training.

(Authority: 38 U.S.C. 3680(a))

(f) *Discontinued by VA (§§21.4215, 21.4216).* If VA discontinues payments of educational assistance as provided by §§21.4215(d) and 21.4216, the effective date of discontinuance will be as follows:

(1) The date on which payments first were suspended by the Director of a VA facility as provided in §21.4210, if the discontinuance were preceded by such a suspension.

(2) End of the month in which the decision to discontinue is effective pursuant to §21.4215(d), if the Director of a VA facility did not suspend payments prior to the discontinuance.

(Authority: 38 U.S.C. 3690)

(g) *Unsatisfactory progress, conduct or attendance §21.4277.* The date the veteran's or eligible person's enrollment is discontinued by the school or the date determined under §21.4277, whichever is earlier.

(Authority: 38 U.S.C. 3474, 3524)

## § 21.4135

## 38 CFR Ch. I (7–1–04 Edition)

(h) *Required certifications not received after certification of enrollment* (§§ 21.4203 and 21.4204). (1) If required certification of attendance of a veteran or eligible person enrolled in a course not leading to a standard college degree is not timely received, payments will be terminated date of last certification. If certification is later received, adjustment will be made based on facts found.

(2) If verification of enrollment and certificate of delivery of the check is not received within 60 days, in the case of an advance payment, the actual facts will be determined and adjustment made, if required, on the basis of facts found. If student failed to enroll, termination will be effective the beginning date of the enrollment period.

(i) *False or misleading statements*. See § 21.4006.

(j) *Disapproval by State approving agency* (§ 21.4259(a)). If a State approving agency disapproves a course, the date of discontinuance of payments to those receiving educational assistance while enrolled in the course will be as follows:

(1) The date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if disapproval were preceded by such a suspension.

(2) End of the month in which disapproval is effective or notice of disapproval is received in the Department of Veterans Affairs, whichever is later, provided that the Director of a Department of Veterans Affairs facility did not suspend payments prior to the disapproval.

(Authority: 38 U.S.C. 3672(a), 3690)

(k) *Disapproval by Department of Veterans Affairs* (§§ 21.4215, 21.4259(c)). If VA disapproves a course, the date of discontinuance of payments to those receiving educational assistance while enrolled in the course will be as follows:

(1) Date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if disapproval were preceded by such a suspension.

(2) End of the month in which disapproval occurred, provided that the Director of a Department of Veterans

Affairs facility did not suspend payments prior to the disapproval.

(Authority: 38 U.S.C. 3671(b), 3672(a), 3690)

(l) *Conflicting interests (not waived)* (§ 21.4005). Thirty days after date of letter notifying veteran or eligible person, unless terminated earlier for other reason.

(m) *Incarceration in prison or penal institution for conviction of a felony*. (1) The provisions of this paragraph apply to a veteran or eligible person whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance allowance at a reduced rate under § 21.3132(a) or (b) or § 21.5139.

(2) The reduced rate or discontinuance will be effective the latest of the following dates.

(i) The first day on which all or part of the veteran's or eligible person's tuition and fees were paid by a Federal, State or local program,

(ii) The date the veteran or eligible person is incarcerated in prison or penal institution, or

(iii) The commencing date of the award as determined by § 21.4131.

(Authority: 38 U.S.C. 3482(g), 3532(e))

(n)–(o) [Reserved]

(p) *Error; payee's or administrative*. (1) Effective date of award or day preceding act, whichever is later, but not prior to the date entitlement ceased, on an erroneous award based on an act of commission or omission by a payee or with his or her knowledge.

(2) Date of last payment on an erroneous award based solely on administrative error by VA or error in judgment by VA.

(Authority: 38 U.S.C. 5112(b)(10) and 5113)

(q) *Fraud; forfeiture resulting* (§ 21.4007). Beginning date of award or day preceding date of fraudulent act whichever is later.

(r) *Treasonable acts or subversive activities; forfeiture* (§ 21.4007). Beginning date of award or date preceding date of commission of treasonable act or subversive activities for which convicted, whichever is later.

(s) *Reduction in rate of pursuit of course* (§ 21.4270). (1) VA will reduce an

## Department of Veterans Affairs

## §21.4135

individual's educational assistance allowance effective the first date of the term in which the individual reduces training by withdrawing from part of a course, if the reduction occurs at the beginning of the term.

(2) VA will reduce an individual's educational assistance allowance effective the earlier of the end of the month or end of the term in which an individual reduces training by withdrawing from part of a course when:

(i) The reduction does not occur at the beginning of the term;

(ii) The individual received a lump-sum payment for the quarter, semester, term or other enrollment period during which he or she reduced training; and

(iii) There are mitigating circumstances, or the individual receives a punitive grade for the portion of the course from which he or she withdrew.

(3) VA will reduce an individual's educational assistance allowance effective the date on which an individual reduces training when:

(i) The reduction does not occur at the beginning of the term;

(ii) The individual did not receive a lump-sum payment for the quarter, semester, term or other enrollment period during which he or she reduced training; and

(iii) There are mitigating circumstances, or the individual receives a punitive grade for the portion of the course from which he or she withdrew.

(4) If the individual reduces training by withdrawing from a part of a course and the withdrawal does not occur because the individual was ordered to active duty; there are no mitigating circumstances; and the individual receives a nonpunitive grade from that portion of the course from which he or she withdrew; VA will reduce the individual's educational assistance effective the later of the following:

(i) The first date of enrollment of the term in which the reduction occurs; or

(ii) December 1, 1976. See paragraphs (e) and (w) of this section also.

(5) An individual who enrolls in several subjects and reduces his or her rate of pursuit by completing one or more of them while continuing training in others, may receive an interval payment based on the subjects com-

pleted, if the requirements of §21.4138(f) of this part are met. If those requirements are not met, VA will reduce the individual's educational assistance allowance effective the date the subject or subjects were completed.

(Authority: 38 U.S.C. 5113, 3680)

(t) *Change in law or Department of Veterans Affairs issue, or interpretation.* See §3.114(b) of this chapter.

(u) *Except as otherwise provided.* On basis of facts found.

(v) [Reserved]

(w) *Nonpunitive grade assigned without a withdrawal from courses.* (1) If an individual receives a nonpunitive grade for a particular course for any reason other than a withdrawal from it, VA will reduce the individual's educational assistance allowance effective the last date of attendance when mitigating circumstances are found.

(2) If an individual receives a nonpunitive grade in a particular course for any reason other than a withdrawal from it, and there are no mitigating circumstances, VA will reduce his or her educational assistance effective the later of the following:

(i) The first date of enrollment for the term in which the grade applies, or

(ii) December 1, 1976. See paragraphs (e) and (s) of this section.

(Authority: 38 U.S.C. 3680(a)(4))

(x) *Independent study course loses accreditation.* Except as otherwise provided in §21.4252(g), if the veteran or eligible person is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the educational institution offering the course loses its accreditation), the date of reduction or discontinuance will be the effective date of the withdrawal of accreditation by the accrediting agency.

(Authority: 38 U.S.C. 3672, 3676, 3680A(a))

(y)-(aa) [Reserved]

CROSS REFERENCE: *Special restorative training.* See §21.3332.

[31 FR 6774, May 6, 1966]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §21.4135, see the List of CFR Sections Affected, which appears in the

## § 21.4136

Finding Aids section of the printed volume and on GPO Access.

### § 21.4136 Withdrawals or nonpunitive grades may result in nonpayment.

(a) *General.* VA will not pay benefits to an individual for a course from which the individual withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless:

(1) The individual withdraws because he or she is ordered to active duty; or

(2) All of the following criteria are met:

(i) There are mitigating circumstances;

(ii) The individual submits a description of the circumstances in writing to VA either within one year from the date VA notifies the individual that he or she must submit the mitigating circumstances or at a later date if the individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(iii) The individual submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, or at a later date if the individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

(Authority: 38 U.S.C. 3680(a))

(b) *Representative mitigating circumstances.* The following circumstances, which are not all inclusive, are representative of those that VA considers to be mitigating provided they prevent the individual from pursuing the program of education continuously:

(1) An illness of the individual;

(2) An illness or death in the individual's family;

(3) An unavoidable geographical transfer resulting from the individual's employment;

(4) An unavoidable change in the individual's conditions of employment;

(5) Immediate family or financial obligations beyond the control of the individual that require him or her to sus-

## 38 CFR Ch. I (7-1-04 Edition)

pend pursuit of the program of education to obtain employment;

(6) Discontinuance of the course by the school;

(7) Unanticipated active duty for training;

(8) Unanticipated difficulties in caring for the individual's child or children.

(Authority: 38 U.S.C. 3680(a))

(c) *Failure to complete a course for the educationally disadvantaged.* If the individual fails to satisfactorily complete a course under 38 U.S.C. 3491(a) without fault, VA will consider the circumstances that caused the failure to be mitigating. This will be the case even if the circumstances were not so severe as to preclude continuous pursuit of a program of education.

(d) *Withdrawals after May 31, 1989.* In the first instance of a withdrawal after May 31, 1989, from a course or courses for which the individual received educational assistance under 38 U.S.C. chapter 32, VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent, and paragraphs (a)(2)(ii) and (a)(2)(iii) of this section will not apply.

(Authority: 38 U.S.C. 3680(a)(3))

(e) *Withdrawals during a drop-add period.* If the individual withdraws from a course during a drop-add period, VA will consider the circumstances that caused the withdrawal to be mitigating, and paragraphs (a)(2)(ii) and (a)(2)(iii) of this section will not apply.

(Authority: 38 U.S.C. 3680(a))

[31 FR 8292, June 14, 1966]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 21.4136, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 21.4138 Certifications and release of payments.

(a) *Advance payments.* (1) VA will make payments of educational assistance in advance when:

(i) The veteran, servicemember, reservist, or eligible person has specifically requested such a payment;